IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO. 638 OF 2003

Kishor H. Chag. ... Petitioner.

V/s.

Kay Ess Impex Pvt. Ltd. ... Respondent.

Mr. Cyrus Ardeshir i/b. Madekar & Co. for the Petitioner.
None for the Respondent.

CORAM : DR. D.Y. CHANDRACHUD,J.

20TH JUNE 2007.

P.C. :-

. The Company Petition is for an order of winding up under Section 433(f) of the Companies Act, 1956 on the ground that it is just and equitable to do so.

2. The petition was admitted on 9th December 2004. This Court recorded that the Company was incorporated on 23rd December 2004 with an equal share capital between the Petitioner on the one hand and the Kapadia Group on the other hand. Differences and disputes arose between the two groups and there was a deadlock. The Company Petition was accordingly admitted. Subsequently, an application was taken out for the appointment of a Provisional Liquidator.

3. By an order dated 23rd June 2006, it was admitted before the Court by Counsel appearing on behalf of both the sides that the same position which prevailed when the order of admission was passed continued. The Court noted that an affidavit has been filed by two Directors of the Respondent in which it was pointed out that it was in the interest of the Company that the order of winding up be passed. Accordingly, an order for the appointment of the Official Liquidator as a Provisional Liquidator came to be passed.

4. An affidavit by way of opposition has been filed by a Company by the name of Watson Standard Company incorporated under the laws of USA through a Constituted Attorney. The affidavit recites that a suit for recovery has been filed by the aforesaid creditor against the Company and that an order of winding up may frustrate the legitimate claim of the Applicant. It would appear from the affidavit that in the aforesaid suit which has been instituted under Order 37 of the C.P.C. and a Summons for Judgment has been taken out which is pending. It would be necessary to clarify that it would be open to the aforesaid creditor to take such steps which are legitimately open in law for the prosecution of its claim.

5. For the reasons already recorded a case for winding up on the just and equitable ground has been made out. The Company Petition will have to be made absolute and is accordingly made absolute in terms of prayer clause (a).